

ADVISORY OPINION NO. 2001-34

Issued On January 3, 2002 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **County Commission** asks if it may approve payments from a decedent's estate to compensate the county Sheriff or his deputies for services rendered in the administration of the estate.

FACTS RELIED UPON BY THE COMMISSION

The County Commission has been asked to approve final settlements filed by the County Sheriff in two decedent estates which he, in his official capacity as Sheriff, was appointed to administer. In one it appeared that the Sheriff has paid himself a substantial fee for serving as administrator. In the other it appeared that the Sheriff had paid three of his employees for their assistance in administering the estate.

The County Commission asks whether it would be a violation of the Ethics Act for its members to approve the final settlement of estates reflecting payments of estate funds to personally compensate the Sheriff or his deputies for performing their public duties in the administration of estates which the Sheriff was appointed, in his official capacity, to administer.

CODE PROVISIONS RELIED UPON BY COMMISSION

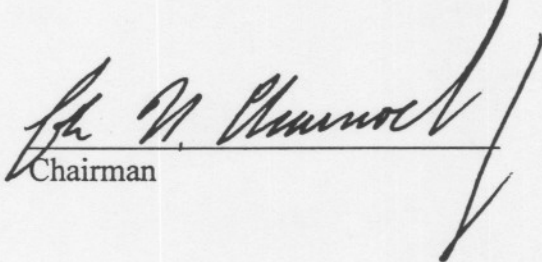
WV Code § 6B-2-5 (b) provides that a "public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

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"A sheriff and his deputies ... shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law." WV Code §6-3-1(a)(5).

The State statute which establishes when a sheriff shall be appointed to administer a decedent's estate also sets the compensation to be paid the sheriff for services provided. "... For his or her services as administrator of an estate, the sheriff shall receive from the estate a fee of five percent of the estate subject to the administration, **which fee shall be deposited to the treasury of the county.**" [Emphasis added.] WV Code §44-1-11.

Read together, these provisions seem clearly to prohibit sheriffs and their deputies from receiving personal compensation from a decedent's estate for services rendered in administering the estate, if the sheriff was appointed pursuant to WV Code §44-1-11. In the face of these provisions, a vote to approve payment of private compensation could constitute a prohibited use of office for the private gain of the sheriff and his deputies and be a violation of the Ethics Act.


Chairman